

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

DAVID J. BOSHEA

Plaintiff,

v.

COMPASS MARKETING, INC.

Defendant.

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Case No. 1:21-CV-00309-ELH

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**DEFENDANT COMPASS MARKETING, INC.’S MOTION FOR LEAVE TO FILE AN
AMENDED ANSWER TO PLAINTIFF’S COMPLAINT AND
LEAVE TO FILE A COUNTERCLAIM AND THIRD PARTY COMPLAINT**

Defendant Compass Marketing, Inc. (“Compass Marketing”), by and through its undersigned counsel and pursuant to Rule 15 of the Federal Rules of Civil Procedure and this Court’s Scheduling Order, hereby files this Motion for Leave to File an Amended Answer to Plaintiff’s Complaint and Leave to File a Counterclaim and Third Party Complaint. In support of this Motion, Compass Marketing states:

STANDARD OF REVIEW

Rule 15 of the Federal Rules of Civil Procedure allows a party to amend its pleading only with the opposing party’s written consent or with leave of court. The Court should freely grant leave when justice so requires. *See* FED. R. CIV. P. 15. The Rules also permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading. FED. R. CIV. P. 13(e). The Local Rules of the United States District Court for the District of Maryland also require counsel to attempt to obtain the consent of other counsel before filing a motion requesting leave to file an amended pleading. D. MD. LOC. R. 6(d).

THE AMENDED ANSWER AND COUNTERCLAIM

As Compass Marketing has been preparing for and engaging in discovery in this case, it discovered that Plaintiff David Boshea (“Boshea”) received sums in “off payroll payments” that were above and beyond his agreed upon salary. These sums were not properly authorized by Compass Marketing and, therefore, should not have been paid to or received by Boshea. As such, Compass Marketing seeks to amend its Answer and add an affirmative defense of “set off” to account for the sums that Boshea improperly received (in the unlikely event that Boshea ultimately were to prevail in this case).¹ A copy of the proposed Second Amended Answer is attached hereto as Exhibit 1. A redline copy, as required by Local Rule 6(c), is attached hereto as Exhibit 2.

In addition, Compass Marketing discovered that a copy of the Complaint, which includes a number of false allegations against Compass Marketing, was circulated shortly after it was filed to third parties doing business with Compass Marketing and/or with whom Compass Marketing sought to do business. As a result of these false allegations, at least some third parties have ceased doing business with Compass Marketing. Compass Marketing believes Boshea was involved in the circulation of the Complaint to these third parties. Thus, Compass Marketing is filing a Counterclaim (and Third Party Complaint) to seek recovery for the damages that resulted from the circulation of the Complaint, which includes a number of false allegations. In addition, the Counterclaim seeks recovery of the amount that Boshea was unjustly enriched. A copy of the proposed Counterclaim and Third Party Complaint (including John Doe(s)) is attached hereto as Exhibit 3.

¹ Compass Marketing also seeks to delete one of its previously filed affirmative defenses that was duplicative of another affirmative defense. Although deleting a duplicative affirmative defense is not necessary, for the sake of clarity and accuracy, Compass Marketing deleted the duplicative defense.

Compass Marketing sought the consent of Boshea to file the Amended Answer and the Counterclaim. Boshea consented to the filing of the Amended Answer and the Counterclaim.

Additionally, since the parties are in the early stages of discovery, no party will be prejudiced by the filing of the Amended Answer or the Counterclaim and Third Party Complaint.

WHEREFORE, Compass Marketing requests that the Court grant its Motion for leave to file an Amended Answer to Plaintiffs' Complaint and leave of court to file a Counterclaim and Third Party Complaint.

Dated: July 29, 2021

Respectfully submitted,

/s/ Stephen B. Stern

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Counsel for Defendant

Compass Marketing, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of July, 2021, the foregoing Motion for Leave to File a an Amended Answer to Plaintiffs' Complaint and Leave to File a Counterclaim and Third Party Complaint was served via the CM/ECF system on the following counsel of record:

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/s/ Stephen B. Stern
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